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Paper No. 5

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JUN 13 2002

In re Application of
Fischell et al.
Application No. 10/051,743
Filed: January 22, 2002
Attorney Docket No. A1-01

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: DECISION GRANTING
: PETITION
:

OFFICE OF PETITIONS

This is a decision on the petition filed April 11, 2002, to establish that Figures 6, 8, and 16 were part of the originally filed application.

The petition is only signed by one of the three co-inventors. However, the original application was accompanied by a paper signed by all three inventors stating that Robert Fischell has the authority to prosecute the application on behalf of all the inventors. Therefore, Robert Fischell has the authority to file the instant petition. A review of the declaration reveals that the declaration does not state the citizenship of the inventors. A proper declaration must be filed. Attached is a declaration form which has been approved by the Office.

On January 22, 2002, the application was filed.

On April 2, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of January 22, 2002, and advising applicants that Figures 6, 8, and 16 described in the specification appeared to have been omitted.

In response, the present petition was filed alleging that the figures were deposited on January 22, 2002. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "13 SHEETS OF DRAWINGS" on January 22, 2002.¹ Petitioner has also submitted a copy of the missing documentation- 3 sheets of drawings which consist of Figures 6, 8, and 16.

Upon review of the record, Figures 6, 8, and 16 deposited on January 22, 2002, have not been located. However, the evidence is convincing that the application papers deposited on January 22, 2002, included the missing figures and that the figures were subsequently misplaced in the PTO.

In view of the above, the petition is **granted**. The copy of Figures 6, 8, and 16 submitted with the petition will be used for examination purposes.

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

Since petitioner has proven the Office misplaced the drawings, the petition fee of \$130 will be scheduled for a refund.

The Notice mailed April 2, 2002, was sent in error and is hereby vacated.

With the original application, petitioner filed a petition to make special.² Petitioner may wish to note that this type of petition is not decided by the Office of Petitions but is decided by the Technology Center. Therefore, petitioner should not be concerned that this decision does not treat the merits of the petition to make special. A decision on the petition to make special will be rendered after the pre-examination processing of the application has been finished and after the file has been sent to Technology Center 3700.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of January 22, 2002, using the application papers filed on January 22, 2002, and the copy of three pages of drawings consisting of Figures 6, 8, and 16, filed on April 11, 2002.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Beverly M. Flanagan
Supervisory Petitions Examiner
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Attached: PTO/SB/01
PTO/SB/02A

² A petition to make special under MPEP 708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.